



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAR 07 2019

OFFICE OF CONGRESSIONAL  
AND INTERGOVERNMENTAL RELATIONS

The Honorable Eddie Bernice Johnson  
Chairwoman  
Committee on Science, Space, and Technology  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Madam Chairwoman:

On behalf of the U.S. Environmental Protection Agency, I am writing in response to your letter dated February 6, 2019, to Administrator Andrew Wheeler, in which you sought information related to the impact of the recent lapse in appropriations on the EPA programs that are within the legislative jurisdiction of the Committee on Science, Space, and Technology.

During the lapse in appropriations, the EPA maintained personnel available to undertake certain "excepted" activities where the agency was authorized by law to incur financial obligations in advance of appropriations. For example, the EPA maintained personnel to provide emergency guidance to states and regulated entities to protect against significant risk to human health, conduct emergency response activities, address imminent risks to human life from contaminated sites or media, and provide assistance as necessary for other situations posing a threat to human life and certain property. The EPA also maintained personnel available to undertake certain "exempted" activities where funds were available.

More specifically, OMB Circular A-11, section 124.2 defines five categories of employees that must be accounted for in the Contingency Plan:

- Their compensation is financed by a resource other than annual appropriation;
- They are necessary to perform activities expressly authorized by law;
- They are necessary to perform activities necessarily implied by law;
- They are necessary to the discharge of the President's constitutional duties and powers;
- They are necessary to protect life and property.

Enclosed, we have included a list of excepted and exempted employees. All excepted employees were instructed to only work the number of hours that were needed to complete their excepted duties. The number of excepted employees also fluctuated depending on the needs of the Agency. While the majority of the EPA's excepted employees were excepted as necessary to protect life and property, we had personnel numbers under three other categories:

- The Agency's Presidentially appointed/Senate confirmed individuals are necessary to perform activities expressly authorized by law.
- In the January 14 Contingency Plan, twelve individuals were deemed necessary to perform activities necessarily implied by law. These employees, from the Office of the Chief Financial Officer, were added to process payments for services rendered for excepted activities where there is an imminent threat to the safety of human life and property and funds were available.
- Individuals working on the Administrator's hearing preparation were identified as necessary to the discharge of the President's Constitutional duties and powers. This number increased between the December 31 and January 14 Contingency Plans according to the work needed to directly support the hearing preparation activities.

As you are aware, even though the lapse in appropriations began December 21, 2018, the EPA was able to use carryover funding to fully operate the Agency through December 28, 2018. Regarding excepted activities after this date, excepted personnel from the EPA Office of General Counsel (OGC) reviewed requests to except other personnel and provided advice on whether there was a legal basis to except the individual. If the request raised a novel or complex issue, the OGC consulted with their counterparts at the U.S. Office of Management and Budget (OMB) and/or the U.S. Department of Justice (DOJ). To make these determinations, OGC attorneys relied on DOJ Office of Legal Counsel opinions and OMB guidance on permissible activities during a lapse in appropriations. Further information on the EPA's procedures and activities that occurred during the lapse in appropriations can be found in the U.S. EPA Contingency Plan in the Event of a Government Shutdown, which we have enclosed.<sup>1</sup>

In consultation with the DOJ, the EPA sought to extend court filing deadlines and court-ordered deadlines to take regulatory actions. In instances where an extension was not granted, the Agency worked with the DOJ to draft required filings. In a small number of instances, the Agency continued work on pending regulatory actions to meet court-ordered deadlines.

Regarding the overall cost to the Agency due to the lapse in appropriations, Agency losses are unquantifiable; however, the Agency incurred losses in productivity and increased interest owed on a small number of payments. Additionally, to our knowledge, at least 300 employees canceled or deferred travel due to the shutdown.

Twelve EPA federal advisory committee meetings were canceled and/or rescheduled due to the lapse of appropriations:

- Mobile Sources Technical Review Subcommittee (MSTRS) of the Clean Air Act Advisory Council (CAAAC) cancelled its January 10, 2019, meeting and rescheduled it for April 2, 2019;
- National Environmental Education Advisory Committee (NEEAC) canceled its January 23-24, 2019 meeting and is in the process of rescheduling it for April 2019;

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<sup>1</sup> See *U.S. EPA Contingency Plan in the Event of a Government Shutdown*, U.S. EPA, <https://www.epa.gov/2018lapse/us-epa-contingency-plan-event-government-shutdown> (last accessed Feb. 14, 2019).

- National Environmental Justice Advisory Committee (NEJAC) is in the process of rescheduling a meeting tentatively scheduled for the end of February to April or May 2019;
- Environmental Financial Advisory Board (EFAB) canceled its February 20-21, 2019 meeting and rescheduled it for April 17-18, 2019;
- Board of Scientific Counselors (BOSC) Air and Energy Subcommittee canceled its January 9, 2019 meeting and rescheduled it for March 22, 2019;
- Board of Scientific Counselors (BOSC) Chemical Safety for Sustainability Subcommittee canceled its January 14-16, 2019 meeting and rescheduled it for April 10-12, 2019;
- Board of Scientific Counselors (BOSC) Homeland Security Subcommittee canceled its February 8, 2019 meeting and rescheduled it for March 19, 2019;
- Board of Scientific Counselors (BOSC) Sustainability and Healthy Communities Subcommittee canceled its February 21-22, 2019 meeting and rescheduled it for April 2-3, 2019;
- Board of Scientific Counselors (BOSC) Safe and Sustainable Waters Subcommittee canceled its February 26-27, 2019 meeting and rescheduled it for April 23-24, 2019.
- Board of Scientific Counselors (BOSC) Executive Committee canceled its April 9-11, 2019 meeting and rescheduled it for June 27-28, 2019;
- Local Government Advisory Committee (LGAC) canceled its January 10-11, 2019 meeting and rescheduled it for June 27-28, 2019; and
- Local Government Advisory Committee (LGAC) Small Community Advisory Subcommittee canceled its January 11, 2019 meeting and rescheduled it for June 28, 2019.

Within the Office of Research and Development (ORD), the EPA maintained personnel available to undertake excepted activities during the lapse of appropriations, including the maintenance of equipment and testing facilities and ensuring any ongoing, time-sensitive projects were monitored and allowed to run their course. Specifically, these maintenance and monitoring activities included:

- The protection of servers to prevent damage that could occur in case of an unscheduled service interruption;
- Backing up data at each ORD site;
- Coordinating and processing the purchase and funding of goods and services to protect EPA equipment and facilities;
- Meeting regulatory requirements (e.g., hazardous waste permit and NRC license requirements);
- Maintaining bacterial cultures, fish cultures, and biological experiments;
- Monitoring and managing bioreactor lysimeter and mine drainage sulfate reduction columns;
- Maintenance of cryopreserved cell lines, on-going selection of engineered cell lines, and isolation of primary cells from fresh tissue procurement; and
- Maintaining the atmospheric chemistry chamber.

Ensuring that EPA facilities were maintained preserved valuable EPA property and facilitated the ability for researchers to pick up where they left off prior to the lapse in appropriations. While there were some deadlines missed due to the lapse in appropriations, ORD does not anticipate significant impacts and is working with the other program offices to develop new timelines for its projects. In those cases where a deadline is still pending, project teams have been asked to find ways to make up lost time and meet the original deadline.

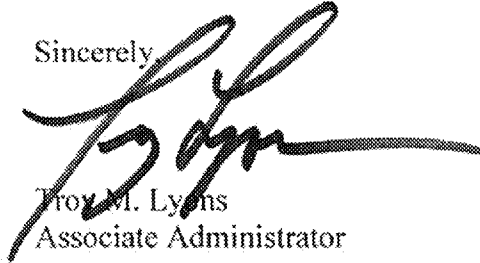
During the lapse in appropriations, the EPA was unable to continue work on chemical assessments under the Integrated Risk Information System (IRIS). Currently, IRIS is focused on eleven priority assessments (<https://www.epa.gov/iris/iris-program-outlook>). EPA program offices identified hexavalent chromium, inorganic arsenic, mercury salts, methylmercury, polychlorinated biphenyls (PCBs), five per- and polyfluoroalkyl substances (PFAS), and vanadium as priority assessments. The inorganic arsenic assessment was the only impacted timeline requiring the rescheduling of a milestone. In this case, a National Academies of Science (NAS) review of the inorganic arsenic systematic review protocol was delayed from March until July 2019. As work continues on each of these IRIS assessments, new timelines are being developed in coordination with the other EPA program offices. Because of the long-term nature of this work, in most cases, the Agency anticipates recouping any time lost due to the lapse in appropriations.

The EPA does not anticipate significant impacts on the schedule for National Ambient Air Quality Standards (NAAQS) reviews, although the court-ordered deadline for finalizing any revisions to the sulfur dioxide NAAQS has been adjusted. For example, as outlined in the May 2018 memorandum, *Back-to-Basics Process for Reviewing National Ambient Air Quality Standards*, the EPA intends to finalize any necessary revisions to the particulate matter or ozone NAAQS by late 2020. More information on the process and status of these reviews may be available on the EPA website (<https://www.epa.gov/criteria-air-pollutants/back-basics-process-reviewing-national-ambient-air-quality-standards>) or the Clean Air Scientific Advisory Committee website (<https://yosemite.epa.gov/sab/sabpeople.nsf/webcommittees/CASAC>).

With respect to civil enforcement inspections, the EPA did not conduct any routine, planned civil enforcement inspections between December 29, 2018, and January 25, 2019. Few EPA inspections would have been scheduled for January because winter weather can impact travel for our inspectors, outdoor facility operations, or the functioning of our monitoring equipment. The lapse in appropriations affected planning for future inspections. Accordingly, the lapse in appropriations may have an effect on the overall number of inspections in FY2019.

The EPA recognizes the importance of the Committee's need to obtain information necessary to perform its legitimate oversight functions and is committed to continuing to work with your staff on how best to accommodate the Committee's interests. If you have further questions, you may contact me, or your staff may contact Travis Voyles in the EPA's Office of Congressional and Intergovernmental Relations at [Voyles.Travis@epa.gov](mailto:Voyles.Travis@epa.gov) or (202) 564-6399.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Lyons", with a long horizontal flourish extending to the right.

Troy M. Lyons  
Associate Administrator

Enclosures

cc: The Honorable Frank Lucas, Ranking Member